

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

HEMMY SMITH

CASE NO. 6:22-CV-06220

VERSUS

JUDGE ROBERT R. SUMMERHAYS

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION

MAGISTRATE JUDGE DAVID J. AYO

**JUDGMENT**

This matter was referred to Magistrate Judge David J. Ayo for consideration and issuance of a report and recommendation. After an independent review of the record, noting the absence of objections filed, this Court concludes that the Magistrate Judge's report and recommendation is correct and adopts the findings and conclusions therein as its own. Accordingly,

**IT IS ORDERED, ADJUDGED, AND DECREED** that the decision of the Commissioner is REVERSED and this matter is REMANDED to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g).<sup>1</sup> More particularly, the Commissioner is instructed to analyze the Claimant's symptoms in comparison with relevant medical listings, and to consider the waxing and waning nature of the Claimant's disabling symptoms and the impact of this characteristic on the Claimant's employability as to any suitable jobs in the national market. Finally, the Commissioner shall permit the Claimant to supplement the record with updated medical records and to move for a hearing (whether in person or by video teleconference).

**THUS DONE AND SIGNED** at Lafayette, Louisiana, this 29<sup>th</sup> day of August, 2024.



ROBERT R. SUMMERHAYS  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> A fourth sentence remand constitutes a final judgment that triggers the filing period for an EAJA fee application. *Shalala v. Schaeffer*, 509 U.S. 292 (1993); *Freeman v. Shalala*, 2 F.3d 552, 553 (5<sup>th</sup> Cir. 1993).